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No. 952

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

ORVILLE L. FREEMAN, SECRETARY OF AGRICULTURE, AND M. R. CLARKSON, ACTING ADMINISTRATOR, AGRICULTURAL RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE,

Petitioners,

v.

ARMOUR AND COMPANY

BRIEF OF ARMOUR AND COMPANY IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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Armour and Company (hereinafter called Armour) hereby opposes the petition of Orville L. Freeman, Secretary of Agriculture (hereinafter called the Secretary) and M. R. Clarkson, Acting Administrator, Agricultural Research Service, for a writ of certiorari to review the interlocutory judgment of the United States Court of Appeals for the District of Columbia Circuit in the above entitled case entered on February 8, 1962.

Question Presented.

The question presented is whether this Court would be justified in granting the Secretary's petition for a writ of certiorari from the interlocutory judgment of the Court of Appeals which directed the issuance of an injunction *pendente lite* in order to prevent further irreparable injury to Armour as a result of the Secretary's arbitrary and capricious change of one of his regulations on November 17, 1961, the effect of which was to compel Armour to cease production of its hams sold in interstate commerce if such hams retained slightly more curing solution than other hams or else to label such hams "IMITATION HAM" when admittedly no injury would be suffered by the public by the issuance of the preliminary injunction.

Counterstatement of Case.

1. The Background of this Litigation.

Prior to 1920 pork products such as hams were cured by rubbing salt and spices on their surface. However, this curing process was in every respect unsatisfactory. Indeed, it was common practice for a housewife to have to soak hams so cured overnight to remove excess salt and to add moisture before cooking (J. A. 50a-51a).[1]

In the 1920's, the packing industry began developing new curing methods to improve its pork products, including hams, which, in the late 1950's, culminated in a curing process whereby the injection of a curing solution resulted in the finished hams weighing up to 10% more than their fresh uncured weight, commonly called "green weight"[2]

[1] All references preceded by the letters J. A. refer to pages in the Joint Appendix in the Court of Appeals lodged with the Clerk of this Court as part of the record in this Court.

[2] Throughout his petition, the Secretary erroneously persists in referring to the curing solution as "water" just as he has insisted upon calling a genuine ham an "imitation ham" (Petition, e.g., pp.

(J. A. 37a, 51a-52a). It was found that hams cured in this manner (hereinafter collectively called "moist hams") were superior from the standpoints of nutrition, tenderness and taste to hams processed to green weight or some weight loss than green weight (hereinafter collectively called "dried out hams") (J. A. 37a, 39a, 41a, 54a, 56a-57a).

However, under the Department of Agriculture's interpretation of its regulations in effect prior to December 30, 1960, the only way in which moist hams could be sold in interstate commerce was by affixing to them the label "IMITATION HAM" (6 F. R. 1142, 9 C. F. R. 17.8(b); 17 F. R. 4845, 9 C. F. R. 17.8(c) (49), (54)) (J. A. 52a, 59a-60a, 69a).

In September of 1960, because of objections to the use of the "IMITATION HAM" label raisd by the packing industry, including the objection that such labeling prevented the sale of moist hams in interstate commerce in competition with moist hams sold in intrastate commerce without the label "IMITATION HAM",[3] experts in the Department of Agriculture (hereinafter called the Department) reviewed the then existing regulations (J. A. 38a-39a, 52a-55a). As a result, the regulations were amended, effective December 30, 1960, to permit the sale of moist hams in interstate commerce without the "IMITATION HAM" label (25 F. R. 13952; 9 C. F. R. 17.8(c)) (J. A. 14a, 39a, 55a-57a, 60a, 70a).

2, 3, 6, 7, 10, 16). The curing ingredients consist of salt, sugar, sodium tripolyphosphate and sodium nitrite (J. A. 83a). These curing ingredients are solids which can only be injected into the hams in a water solution unless the industry is to revert to the methods used prior to 1920 which were unsatisfactory and uneconomical in every respect (J. A. 51a).

[3] Thus, the Secretary misstates the fact when he says that for over twenty years the imitation labeling requirements have been "* * * consistently applied without industry challenge" (Petition, p. 21).

The Department's reasons for amending the regulations were:

> "• • • They provide Federal recognition and approval, with necessary safeguards, of processing methods for smoked hams and other cured meats, that yield a juicier product with excellent color and texture. • • • Consumer demand for juicier smoked meats is increasing. The revised regulations permit packers to provide Federally inspected products to meet this demand and to satisfy a wider range of consumer preferences. • • • [The] provision for not more than 10% added moisture in certain of these products was approved as contributing to the best interests of both the consuming public and meat producers" (J. A. 39a-40a, 55a-57a).

In March of 1961 the present Secretary announced that public hearings would be held for the purpose of determining whether or not the December 30, 1960 amendment to the regulations should be modified or continued in effect (J. A. 40a, 61a, 70a, 71a, 74a-79a). At these public hearings a witness for the Department testified as follows:

> "The Department also recognized that the problem was one of properly and adequately identifying and labeling smoked meat and meat products and not one of wholesomeness of the finished product" (J. A. 41a, 53a).

Armour's position at the hearings, along with others, was that the December 30, 1960 amendment be continued in effect, modified, however, so as to require appropriate labeling regarding moisture content (J. A. 41a, 42a-43a, 82a).

After the hearings, a special three-person Committee appointed by the Secretary to review the matter came to the conclusion that moist hams should be allowed to be

sold in interstate commerce with appropriate labeling regarding moisture content, and the National Agricultural Advisory Commission appointed by President Kennedy was of the same view (J. A. 8a, 43a-46a).

Notwithstanding, on October 13, 1961, the Secretary announced that a regulation would become effective November 17, 1961, limiting the definition of hams sold in interstate commerce to dried out hams, thereby excluding moist hams (9 C. F. R. 17.8(c)(49)(54); 26 F. R. 9772) (J. A. 27a-28a, 80a).

By virtue of this change in the regulations which decreed that only dried out hams are "ham", moist hams perforce became something other than ham. Therefore, said the Secretary, moist hams, not being ham, must be sold as "IMITATION HAM" under his other regulation requiring products in imitation of another food to be labeled "Imitation" (9 C. F. R. 17.8(b)).

2. The Procedural History of this Litigation.

On November 6, 1961, Armour commenced this action by filing its verified complaint requesting that the regulation to become effective November 17, 1961 (hereinafter called the regulation redefining ham) be declared null and void and that the Secretary be permanently enjoined from enforcing it because, among other reasons, it was arbitrary and capricious and Armour would be irreparably injured by its enforcement (J. A. 3a-12a).

On the same date Armour filed its motion for an injunction *pendente lite*, and three days later the Secretary cross-moved for summary judgment and opposed Armour's motion (J. A. 57a-58a). The affidavit in support of the cross-motion and in opposition to Armour's motion stated in relevant part (J. A. 72a-73a):

> "• • • The amended regulations will protect the consumer by providing that products not meeting

> the moisture requirements of the regulations shall be identified as 'Imitation' * * *.
>
> "Under the present regulations in effect until November 17, 1961 the products in question can contain up to 10% added moisture without being required to be labeled 'Imitation' * * *.
>
> * * * * * *
>
> "* * * The basic difference under the amendments will be that articles containing up to 10% added moisture, now being marketed as smoked hams or similar products, must thereafter be identified as 'Imitation' * * *."

Prior to the hearing in the District Court on the motion and cross-motion, Armour served a supplemental affidavit in support of its motion in which it was stated (J. A. 83a):

> "* * * The label 'Imitation' which defendants seek to require Armour to place upon hams processed to exceed the uncured weight (hereinafter called moist hams) is utterly false and misleading because the word **'Imitation' connotes** inferiority and cheapness resulting from the substitution of ingredients."

Thus, the basic issue presented to the District Court, contrary to what is said throughout the Secretary's petition, was whether the Secretary acted arbitrarily and capriciously in limiting the definition of hams to dried out hams, thereby requiring the label "IMITATION HAM" to be affixed to moist hams sold in interstate commerce. That this was the basic issue is further shown by the following statement of counsel for Armour at the oral hearing on the motion and cross-motion:[4]

---

[4] See page 20 of transcript of proceedings on plaintiff's motion for preliminary injunction and defendants' motion for summary judgment, dated November 13, 1961, in the certified original supplemental record on appeal which has been lodged with the Clerk of this Court as part of the record in this Court.

> "Now, what this all comes down to again is whether or not the label, 'Imitation Ham' is going to be restored on the hams that have a little more moisture in them than the dried out hams. That is really what this case comes down to."

On November 14, 1961 the District Court entered its order denying Armour's motion and also denying the Secretary's cross-motion (J. A. 99a).

Since the regulation redefining ham was to become effective on November 17, 1961, Armour immediately moved in the Court of Appeals for a stay of its effective date pending an appeal from the order of the District Court (R. 159).[3] The Court of Appeals denied the motion but, recognizing the urgency of a decision on the appeal, expedited the filing of briefs and the hearing of the appeal (R. 159). The appeal was heard on December 15, 1961, and on February 8, 1962, the Court of Appeals unanimously reversed the District Court's denial of Armour's motion for an injunction *pendente lite* (R. 109-112, 113).

3. The Decision of the Court of Appeals on the Question Presented to it.

Contrary to what is said by the Secretary in his petition here (Petition pp. 3, 8-10, 14, 21-22), the basic question presented to the District Court, as shown above, later rephrased appropriately for the Court of Appeals was (R. 139):

> "Did the District Court abuse its discretion in denying appellant a preliminary injunction against the enforcement of an amendment to certain federal meat inspection regulations promulgated by the

[3] All references preceded by the designation "R" are to pages in the record of the proceedings in the Court of Appeals not included in the Joint Appendix but lodged with the Clerk of this Court as part of the record in this Court.

appellees requiring that certain of appellant's smoked pork products, no different than its other smoked pork products except that they contain up to 10% more moisture, bear the label 'Imitation' rather than some other label such as 'Containing Not More Than 10 Per Cent Added Moisture' when produced in appellant's federally inspected plants?"

The direct, unequivocal and unqualified answer to this question was, in the unanimous opinion of the Court of Appeals (R. 111-112):

> "On consideration of the papers before us, we think it was clearly error to deny Armour's motion for a preliminary injunction. The Secretary's amendatory regulation, which is under attack, is capricious and arbitrary on its face in requiring a packer to label a genuine ham as Imitation Ham, thus forcing him into violating the statute which forbids misbranding; and nothing in the record as presently constituted supports or justifies such an enforced distortion of the truth. The Secretary could easily have made this litigation unnecessary by merely requiring that labels on moist hams bear a legend showing the nature and extent of the added moisture. Instead, he chose to require the false and deceptive Imitation Ham label."[6]

The Court of Appeals also unanimously held that (R. 112):

> "Irreparable injury to Armour from the enforcement of the regulation is apparent without demonstration, for the attempted marketing of meat prod-

[6] The reference in the opinion to "* * * the statute which forbids misbranding" is a reference to the Meat Inspection Act, 34 Stat. 1260, 1262, as amended, 21 U. S. C. §§71, 75, which provides in relevant part (21 U. S. C. §75), that no meat or meat food products "* * * shall be sold or offered for sale * * * in interstate, or foreign commerce under any false or deceptive name * * *."

> ucts thus officially required to be grossly misbranded could not fail to damage its good name. Withdrawal from the interstate market—Armour's only other alternative—would of course cause loss of profits which could never be recaptured.
>
> "We see nothing in the record before us to indicate the public interest would be adversely affected by the grant of a preliminary injunction."

Emphasizing that the Court was simply deciding that Armour *probably* would prevail upon the merits and not that a trial on the merits was being foreclosed, the Court further stated as follows (R. 112):

> "Upon remand, such an injunction should be entered. Thereupon, the appellees will of course have an opportunity to plead in justification of their position, and to introduce proof on the issues formed by the pleadings."

After the foregoing unanimous opinion of the Court of Appeals was handed down, the Secretary engaged in what Armour believes it is fully justified in calling a series of dilatory motions designed to prevent Armour from obtaining the injunction *pendente lite* to which the Court of Appeals found it to be entitled.[7] One result of these motions was that the Court of Appeals had occasion to consider *en banc* the issues raised on the appeal and the

[7] First the Secretary moved for an extension of time within which to file a petition for rehearing (R. 114-117). When this motion was denied (R. 118), he moved for a reconsideration *en banc* of the motion and at the same time moved for a stay of mandate pending decision on the motion for reconsideration (R. 119-123, 178-179). These motions were denied (R. 124, 183), so he moved for an order recalling the mandate which had been transmitted to the District Court and for a stay of its reissuance pending the filing and disposition of a petition for certiorari (R. 184-186). Again this motion was denied (R. 192) and the Secretary then moved in this Court for a stay of the issuance of the mandate pending the filing and disposition of this petition, and the Chief Justice granted the motion by order dated April 18, 1962.

position of the Secretary on those issues as restated in his petition for rehearing, despite the untimely filing of the petition.

The majority opinion of Chief Judge Miller, dated April 2, 1962, stated that the Secretary's petition for rehearing had been examined and that "* * * it states no reason for changing the conclusion we reached in our opinion of February 8" (R. 128). The lengthy concurring opinion of Judge Prettyman, dated April 13, 1962, which would have been shorter "* * * had not the defendant officials so vigorously insisted upon what seems to me to be a wholly untenable position, and had not that position involved a gross deception (or so it seems to me) of plain, ordinary people in the mass," (R. 153-154) concluded as follows (R. 154-155):

> "In summary my view is:
>
> "(1) No authoritative support is offered, or exists, for the proposed label regulation, so far as the papers presently on file are concerned;
>
> "(2) the proposed label is false;
>
> "(3) the proposed label is deceptive to consumers;
>
> "(4) the proposed label is illegal;
>
> "(5) no excuse exists for insistence upon this label, as all recognizable purposes could easily be achieved by a simple, accurate labeling, indicating the proportion of water content in these hams;
>
> "(6) the proposed label is contrary to the public interest in the most serious sense; and
>
> "(7) the trial judge, in the applicable legal idiom, abused his discretion in denying the preliminary injunction."

Thus, the Court of Appeals has fully examined the Secretary's contentions in this case and has found them to be completely without merit.

Reasons for Denying Certiorari.

The Court of Appeals has already said of the regulation decreeing moist hams not to be ham that, in the words of Judge Prettyman, "* * * an unconscionable fraud is being perpetrated * * * by order of the Government" (R. 144) and, in the words of Judge Miller, it "* * * is capricious and arbitrary on its face * * *" (R. 111).

Moreover, the Court has found that as a result of this arbitrary and capricious regulation Armour has been and is suffering irreparable injury since, in the words of Judge Prettyman, "* * * every day on which plaintiff is compelled by Government edict to sell genuine products as imitations, it is suffering injury to its reputation and enormous, irrecoverable losses in profits" (R. 154).

The Court further found that the public health is and in no way can be affected by the issuance of a preliminary injunction, for, as Judge Prettyman said, "* * * Ham is a healthful product with or without water, indeed, one of the healthiest products on the American market. The proposed regulation is aimed at controlling the weight of the ham and its moisture, and nothing else" (R. 148).

Thus, each day that goes by Armour is suffering further irreparable injury, and yet the Secretary would have this Court compound such injury by granting his petition for a writ on grounds that are completely specious. We will now review each of the grounds asserted by the Secretary for granting the writ and, we believe, demonstrate that they are without merit and completely fail to meet the requirements of Rule 19 of the Rules of this Court.

In what is obviously an attempt to show a departure from accepted judicial procedures warranting this Court's supervision, the Secretary first argues that certiorari should be granted because the Court of Appeals, in his view, decided a question which had not been presented to the District Court. What the Secretary seems to be saying is that in the District Court, Armour simply challenged the regulation redefining hams and did not challenge the labeling consequences brought about by his redefinition of the word ham. This is simply not the case.

In making this contention, the Secretary has completely ignored the facts set forth in the record. The issue that has always been litigated in this case and was fully presented to the District Court was and is (a) the validity of the regulation redefining the word ham, decreeing that moist hams are not ham and (b) the effect of such redefinition, namely, that moist hams sold in interstate commerce must be labeled "IMITATION HAM". This effect comes about because, says the Secretary, moist hams are no longer ham by virtue of his regulation redefining ham, and accordingly, they must, says the Secretary, therefore be labeled "IMITATION HAM" under his other regulation (hereinafter called "the imitation label regulation") requiring products in imitation of another food to be labeled "Imitation".

The record demonstrates repeatedly and conclusively that Armour has challenged both the validity of the regulation redefining hams and the labeling consequences necessarily flowing from it under the imitation label regulation. This challenge was made at the public hearings held by the Secretary, it was repeated in the proceedings in the District Court and it has been repeated at each stage of this litigation thereafter (J. A. 6a, 26a, 41a, 83a; See footnote 4, p. 6, *supra*). Moreover, the record fully demonstrates

that the Secretary realized that in the District Court Armour was every bit as concerned about the labeling consequences of the regulation redefining hams as the validity of the regulation itself (J. A. 72a-73a). Accordingly, there is not the slightest basis for the persistent and misleading contention by the Secretary that this issue was not raised in the District Court.

Equally without merit is the Secretary's contention that the decision of the Court of Appeals "* * * casts a cloud upon the legal propriety" of hundreds of other imitation labels "* * * as well as the HAM label specifically condemned in the present case." (Petition, p. 21). Having just fallen short of the mark by arguing that Armour did not challenge the application of the imitation label regulation to moist hams in the District Court, the Secretary now goes completely wide of the mark in arguing that Armour, in the Court of Appeals, challenged the validity of the Secretary's imitation label regulation as applied to all products. Armour did no such thing. We at no time challenged the right of the Secretary to require that imitations of a food product be labeled as such. Armour's objection has always been confined to the validity of the regulation redefining hams and the consequences flowing from it under the imitation label regulation.

We repeat, Armour has never attacked and is not now attacking the imitation label regulation as applied to all products nor has the Court of Appeals said that it is invalid as applied to all products. What the Court of Appeals has said is that the regulation redefining hams, with all of its direct and collateral consequences, is arbitrary and capricious.

In short, we do not contend and have not contended that the Secretary does not have the right to require products imitating others to be labeled "Imitation" but we do say

that he cannot by the combined use of the regulation redefining hams and the imitation label regulation require us to label as imitation that which is genuine, *and this is what the Court of Appeals held.* Obviously this limited holding does not "cast a cloud" upon all of the imitation labels prescribed by the Secretary.

There is also no substance whatever to the Secretary's contention that the writ should be granted on the ground that the decision of the Court of Appeals conflicts with the opinion of this Court in *Houston* v. *St. Louis Packing Co.*, 249 U. S. 479 (1919). The short answer to this contention is that in the *Houston* case this Court held that: "* * * a regulation of the Secretary * * * will not be reviewed by the courts, *where it is fairly arrived at with substantial evidence to support it.*" (Emphasis supplied) (249 U. S. 484). There, the decision of the Secretary of Agriculture was fairly arrived at with substantial evidence to support it. Here, it was not. The Court of Appeals found that the regulation redefining hams was "arbitrary and capricious on its face" (R. 111); that its consequences under the imitation label regulation violated the Meat Inspection Act prohibiting false and deceptive labeling, (R. 111) and that "nothing in the record as presently constituted supports or justifies such an enforced distortion of the truth (R. 111)".[3]

In his futile attempt to find some support for his position in the *Houston* case, the Secretary says that: "If the Secretary may validly provide that sausage may not contain water or cereal in excess of the Secretary's standard

[3] Undoubtedly, the Court of Appeals here was following the holding in *Nolan* v. *Morgan* (C. A. 7, 1937), 69 F. 2d 471, which, although quoted by Armour at length in its briefs in the District Court and the Court of Appeals, has always been completely ignored by the Secretary, presumably because it cannot be answered.

and still be labeled SAUSAGE, he must have the same power to provide that ham which contains water in excess of the standard shall not be labeled HAM" (Petition, pp. 16-17).

Judge Prettyman gave the answer to this baseless contention when he said (R. 146):

> "* * * Of course simulated sausage can validly be required to be labeled 'imitation'. Simulation is imitation and sausage is a composite of ingredients requiring a recipe for its manufacture, simulated easily by the use of other ingredients. Ham is not such a product. By no legerdemain of semantics can this analogy be applied to pure ham varied only by the addition of a bit more water. The analogy is far fetched and supplies no support for the presently proposed labeling of hams."

Judge Miller expressed the same opinion, stating as follows (R. 127):

> "There may be cases indicating that a manufactured product should be labeled 'imitation' if it does not conform to accepted standards for that product; or that a synthetic product which approximates the properties of a natural product, but in fact is not that product, should bear the label 'imitation.' But such cases cannot apply here; a natural ham is not made into a manufactured or synthetic imitation of a real ham because it has been subjected to a curing process which leaves in it a residue of moisture."

The only other case upon which the Secretary primarily relies is *62 Cases of Jam v. U. S.*, 340 U. S. 593 (1951). This case has no application here either. There, a product admittedly imitating jam was being sold as imitation jam and the government was attempting to prevent its sale even under the imitation label. The government

asserted that only genuine jam could be sold. This Court said that the government had no right to prevent the sale of a properly labeled product imitating jam and that imitation jam labeled as such was properly labeled. We fail to see how that case applies here where we are being asked to label a genuine product as imitation. In the *Jam* case, there was no challenge to the definition of the product imitated. Here, that is the basic issue.

In other words, the Secretary's contention here comes down to this:

"(a) He may define a product in any manner and on whatever basis he may choose—arbitrary or otherwise.

(b) Once he makes this decision, nobody can question it.

(c) It makes no difference whatsoever that his definition results in forcing the producer to discontinue selling or else label his genuine product a cheap counterfeit; i.e., an "Imitation."[9]

That is precisely what has happened here. The Secretary arbitrarily redefined a ham to exclude moist hams, and he says we have no right to question this decision, even though moist hams are as genuine as dried out hams.

In this connection, Judge Miller and Judge Prettyman stated respectively, as follows (R. 127, 141):

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[9] Apparently fearing to use the express language embodied in the imitation label regulation, namely, that it applies only to products which are "in imitation of another food," the Secretary consistently refers to this regulation as if it required foods which merely "resembled" other foods to be labeled "imitation" (Petition, e.g., pp. 7, 8, 14, 18). The point that the Secretary uses the word "resembled" instead of "imitated" is not significant when related to moist hams since they do not "resemble," much less "imitate," anything. They are simply "hams," and no less so than dried out hams. But the language used by the Secretary in the petition, to our view, indicates a realization that he is treading on what even he believes to be at best tenuous ground.

"The leg of a pig is a natural product, and a ham is still part of a pig's leg even though treated with a curing solution. The injection of moisture cannot transform it into an imitation of a real ham."

* * * * * *

"It may be more moist than the unwetted pork meat but it is still ham if it is cured hog thigh. As a matter of plain fact, such a ham is * * * a real ham, a ham by definition and by universal common acceptance."[10]

In short, we do not question the right of the Secretary to see that a product is correctly labeled as to its content. Nor do we dispute the right of the Secretary to require that a product that imitates a genuine product be labeled as imitation. We do say, however, that what the Secretary has done here is neither of these things. He has in effect by regulation required us to label as imitation that which is genuine. This, we and the Court of Appeals say, is arbitrary and capricious and beyond the power granted the Secretary under the Meat Inspection Act.

Finally, in saying that we should have submitted labels to the Secretary, he again misses the basic point. We

[10] The Secretary says that this view "overlooks the looseness and ambiguities of many common terms" and that "loose ill-defined colloquial usage" leads to confusion (Petition, p. 17). How anyone can seriously say that the word "ham" is loose and ambiguous is simply beyond our belief. We think that this is the type of reasoning Judge Prettyman had in mind when he stated that he had "* * * tried to treat seriously and soberly the government's contentions in respect to this label although much of its argument seems to me to border on the fantastic" (R. 155). The fantasy is particularly dramatic on this point since the Secretary's own regulations provide in relevant part as follows (9 C. F. R. 17.2(b)(1)):

"Section 17.2 Label: What to contain, when and how used. * * * (b) (1) The name of a product shall be the *common* name, if any, and one which clearly and completely identifies the article * * *" (Emphasis supplied).

are not complaining about the imitation label regulation. As we have repeatedly stated, the complaint here is that the Secretary has promulgated a regulation arbitrarily limiting the definition of genuine hams to dried out hams, thereby saying that moist hams are something other than ham, thus forcing us to label our genuine moist hams "IMITATION HAM." So long as the regulation which says that moist hams are not ham remains in effect, there is nothing to talk to the Secretary about as far as labels are concerned, for the language of the regulation redefining hams now contains no provision which would permit the use of a qualifying phrase regarding moisture content or anything else.

Conclusion.

Accordingly, there is no reason why this Court should grant the petition for a writ from this interlocutory judgment in this case which, despite the contentions of the Secretary, is limited precisely to its narrow facts and doesn't challenge anything but a regulation which has the effect of requiring us to label genuine ham an imitation.

Respectfully submitted,

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